UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

RALPH VARGAS, and BLAND-RICKY ROBERTS

Plaintiffs.

DECLARATION OF BRAD STRATTON

VS.

PFIZER INC., PUBLICIS, INC., FLUID MUSIC, EAST WEST COMMUNICATIONS, INC. and BRIAN TRANSEAU p/k/a "BT"

Defendants.

Civil Action No.: 04 CV 9772 (WHP)

ECF CASE

Judge William H. Pauley III

Declaration of Brad Stratton

- 1. I, Brad Stratton, am the Music Producer of Defendant Alanda Music, Ltd. d/b/a Fluid Music ("Fluid") in the referenced action. I make this declaration based upon my personal knowledge of the facts set forth herein. I make this declaration in support of Defendants' Joint Motion for Summary Judgment. I am over 18 years of age and if called upon to testify I would and could testify competently as to the factual matters stated herein.
- 2. Fluid is and has been in the business of producing music for a variety of uses including use in commercials for seven years.
- 3. Fluid acquired from Defendant East West Communications, Inc. a collection CD/ROM entitled "Breakz from the Nu Skool", which was produced by Defendant Brian Transeau and distributed by Defendant East West Communications, Inc. Fluid purchased this CD through a music retailer. Fluid Music produced the music for a :60 second commercial for Celebrex entitled "With Celebrex".
- 4. The rhythm track for the "With Celebrex" music was created in part using a drum loop entitled "Aparthenonia" which is contained on the "Breakz from the Nu Skool" CD.
- 5. As the track progresses and develops, additional musical elements such as bass, guitars, and synthesizer melody are introduced to make the track build to its conclusion.

- 6. Additionally, the "Aparthenonia" track is edited and rearranged as the "With Celebrex" music develops to give some variation to the rhythm track.
- 7. The "Aparthenonia" loop is simply one element in an overall musical composition, and is by no means the key to its uniqueness and personality.
- 8. At no point during the production of the "With Celebrex" music did Fluid have access to any musical compositions or recordings owned or created by the Plaintiffs, nor had Fluid ever heard of the Plaintiff until the filing of this complaint.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 29th day of June 2005

Brad Stratton